

**Excerpt from the  
Monday, July 8, 2002  
CITY PLANNING COMMISSION  
MINUTES  
220 City Hall  
Minneapolis, Minnesota 55415  
4:30 p.m.**

**29. 5801 Nicollet Avenue South (11<sup>th</sup> Ward - BZZ-636, CUP)**

Application by Paul Warnert d.b.a. Bobby & Steve's Autoworld for a conditional use permit to allow a convenience store with gas pumps. (Staff, Jim Voll)

Jim Voll presented the staff report.

Commissioner Schiff asked Mr. Voll to explain process and how the neighborhood association hadn't reviewed this and issued a recommendation?

Voll, staff, replied that he would have the applicant answer. All applicants are instructed to meet with the neighborhood group. The policy is that staff would not hold something up if the applicant didn't go to the neighborhood group. The main reason for that is the 60-day law. However, if the Council or the neighborhood group requests it and the Planning Commission believes it is warranted, the Planning Commission has typically indicated that a project should go back [before the neighborhood]. He was unsure why they hadn't gone to the neighborhood. They had mentioned that they should go to the meeting.

Commissioner Bradley asked where in the Zoning and Planning Committee report it talked about the low-intensity of a commercial corridor? He thought commercial corridors were medium to high density uses.

Voll, staff, replied that he had said commercial corridor, but it is a community corridor. Commercial corridors have more intense uses, community corridors are more low intensity commercial. The question was what becomes high intensity and what becomes low intensity.

The public hearing was opened.

Gary Wood, Attorney representing the applicant, stated that he would respond to any questions between the plan that was presented previously and this plan. He would address some of the issues regarding the status of litigation that was pending and the issues about intensity and how they were trying to deal with those and had hopefully dealt with that issue to some degree in this design. He asked Mr. Thompson to describe the design plan and to respond to any questions.

Rob Thompson, CI Construction, project builder and architect, indicated that the site plan met all of the criteria and that was not the issue. The issue was the definition within the Comprehensive Plan as to what the definition of medium or low intensity really was. He wanted to talk about the report that came out addressing the findings from the appeal. They did not receive the findings of fact until after the appeal was accepted. This was a

discussion they had partially at the meeting and a document that was drafted afterwards in much more detail. The Comprehensive Plan was never brought forth to them during any of the planning meetings, it wasn't discussed at the neighborhood meetings. Parts of it were discussed in general about too high a use or too much activity, but the Comprehensive Plan as it relates to the zoning was never an issue until they got to the City Council meeting. From their perspective, the property was zoned properly and the uses were permitted subject to the conditions set forth. With that in mind, they had tried to make some modifications to the plan. To address why they hadn't attended the (neighborhood) meetings, they chose not to because they didn't believe there was an equitable resolution between what the owners wanted to do and what the neighbors wanted to see. The neighbors didn't want to see it there and they did. They tried to take the information that they had at some of the informal meetings. They met between 4-7 times with various neighbors and at the neighborhood meetings and tried to incorporate that further. What was before the Commission was derived from those efforts. The foot print of the project now was about 9,896 square feet down from the 11,449 which represented approximately a 15% reduction in square footage. They thought that would show in good faith that they were trying to reduce what the neighbors thought was too intense of a use. They also wanted to point out that instead of demolishing the homes, the owner would offer those homes free to someone if they chose to move them and create some additional affordable housing somewhere else. Both of those homes were in very poor shape. In terms of the intensity, one of the things that they had learned from designing what they called neighborhood retail centers such as this one, with the advertising that was done and the customer profile was derived from the neighborhood. It was not meant to draw traffic from 35-W or Diamond Lake Road. It was meant to take from the traffic already there. The traffic at that intersection is about 15,000 cars a day. The studies they had done to develop the requirement in terms of the financing and the project cost, indicate that they would expect about 2% of that traffic would be drawn into the site or about 300 cars/day. It could be 400 or it could be 250, but their best guess was about 2% which was consistent with what the National Association of Convenience Stores would suggest that a typical convenience store could draw off of the existing traffic. Because this was being designed to accommodate the neighborhood, for example being used as a meeting place where people could gather and have coffee or lunch at the deli, they didn't anticipate that they would be drawing traffic from elsewhere to create more traffic on the Nicollet and 58<sup>th</sup> Streets. Based on the 16 hours of operation, they would expect anywhere from 15-20 cars an hour. Some hours late in the evening or early in the morning might be less, some during the day might be more, certainly in the area of 15 and maybe up to 35 cars an hour which would be one car every 3-5 minutes. It was not like it was a high and intense, with traffic driving onto the site with cars running exuding fumes onto the site. It was 15-20 cars, which was far less than drive by that intersection currently. All of the cars are shut off when they are fueling, it was a requirement by law to shut the car off. Most cars that come in and park would not be running. The fuel trucks have a Phase I vapor recovery so that any of the fumes that are exhausted from the tanks would be drawn back into the truck, so there would be no fumes like there are in a lot of existing convenience stores. This was a fairly new requirement. They didn't think that the traffic that they would be drawing into the site would adversely affect the safety of pedestrians and he thought that was indicated in the staff report that they didn't find that would create a problem. Some of the other issues that were addressed in the report were the noise factors. Cars don't make a lot of noise while

sitting idling and driving in. One of the concerns was the car wash and the noise it would make and they had on occasion built car washes in municipalities that required that the car wash meet a certain decibel rating and it had been their experience that the car wash that they were proposing would be somewhere in the area of 60-65 decibels which would be far less than the noise already existing on the street. They didn't see that as an issue. The car wash building had been extended to be a longer building so that the doors could remain closed as the dryer dried the car. As the dryer stopped the doors open and cars could leave. The screening that they were proposing to put in would also decrease the existing noise that was already present at the corner. Light pollution was an issue and they intended to use all lighting that would be directed toward the ground with shields on the bulbs so that they did not produce glare that a lot of the new convenience stores had. It would all be within the codes and the requirements set forth by City Planning. This facility will be a vast improvement over what was existing. He thought that they would do a good job in terms of the appearance and the upkeep of the new facility to be a much more welcomed business in the neighborhood. It came down to the definition of low and medium intensity and what it meant within the Comprehensive Plan and he didn't believe that it was objective enough to decline their request.

Paul Warnert, applicant, indicated that they met with Council Member Benson 3-4 weeks ago and what came out of that meeting was that they gave him a copy of the new design and he was going to talk to the neighborhood with that new plan. They left that meeting with the assumption that they weren't going to have a neighborhood meeting and he was going to talk with the neighborhood association. That was the reason that they didn't meet with the neighborhood. He thought they would be done with this a year ago, however they were back before the Planning Commission. One of the things he was asking from the City of Minneapolis was to stand behind the laws and ordinances that they had. He didn't feel that any of the issues and a lot of the comments that they had in the past came down to them being able to build. They didn't ask for any variances. The property was zoned C2. He felt they worked with the neighbors the best that they could. They had six meetings with them. They needed to do something on the corner. He was embarrassed about the way it currently looked. He heard from many people and had signatures from over 350 people in favor of this. Of the neighbors against it, there were only a couple within 350 feet of the proposed site. Many people thought it would beautify the area and the neighborhood would react well. It was stated at the last meeting that they had that it was a big deal in Columbia Heights and they were really against their proposal. If you go back now, now they love it and they were totally against it. Bobby is on the City Council and that says something for the neighborhood and for the City that was so opposed to him rebuilding. He just asked the Commission to do what was good for the City and the well being of the City and not just the well being of the neighborhood. He asked that they take everyone's information and rule on it the best they could. They were looking at what was acceptable by law.

Mr. Wood addressed the issues about what happened after the City Council reversed the decision of the City Planning Commission a year ago. They challenged what that standard was when in fact it appeared that the primary reason for rejecting this was on the basis of intensity when there was no evidence as to what intensity was. Perhaps the applicant should have come forward with more evidence with respect to the traffic numbers that had already been assessed in the area and what typical usage of convenience facilities was, but likewise there was no evidence offered to substantiate any of the issues that this particular business

would so intensify the use of this property that would be in some way in violation of either the zoning laws or the site plan which had been designed for that particular use. It was important to note that this is zoned C2, not C1. It was intended to be used for something larger than the smallest commercial operation. The other thing that was hard to visualize in this was the size of this area. This was not a typical Holiday or Super America station, this is an extremely large area that this plan had been designed for. To the extent that they didn't have the definition for intensity, the plan addressed a couple of those issues in some important ways. In changing from the original plan which the Planning Commission approved and the new plan, two things in particular had been done. First, the shop had been included with the convenience store and the entrance to the property had been moved further South along Nicollet Avenue so that it was not so close to the intersection. They believed that would help in terms of the traffic flow. Second, instead of having a separate building for the service station, the vehicles would move in and either go to the gas pumps, to the parking area or to the shop area. There won't be as much cross traffic going between the shop building and the pumps. The entire property is surrounded both by fencing and by landscaped space, all of which was intended to separate this property from the immediately adjacent property owners which are to some degree residential. He also knew that in the documents there was a reference to the fact that at present there were about 50 cars a day and this may be 300 cars a day. Of course that was an increase, but the question was whether what was intensity, was that such an intense use for the activities that were now intended for space that was completely unused. His understanding was that there was no calculation put in for the number of visits or movement of traffic in and out of this property for the commercial building that was on the East side of the property or for the home and duplex which were on the South area of the property. Given the fact that the property itself was not destination shopping, doesn't fall within the requirements of the code for a specific traffic management plan and simply intends to access the already existing traffic on Nicollet Avenue, he asked the Commission to support the findings of the Planning Department that had essentially concluded and in contravention of the City Council's prior decision that this is in fact in compliance with the Minneapolis Plan and with a community corridor.

Commissioner Bradley indicated that Mr. Wood said that this was in litigation and asked him to tell the Commission about that as a contextual issue.

Mr. Wood replied at the time that the City Council issued the decision to grant the appeal to reject the Planning Commissions decision, they did not have any findings. Those were not received until sometime after the City Council decision was made. All they had were the oral comments that were made at that Council meeting which referred to intensity of use and attempted to relate intensity of use to one of the first standards for determining whether to reject or approve a conditional use permit, whether or not the development would be detrimental to the neighborhood. Their objection was in order for that portion of the statute to actually be enforceable, there must be some relevant standard against which a reasonable person can measure their activity. When the term used was simply intensity, without any quantification of why this property created a change in the use or made it more intense, or that the intensity created some risk to the public, some safety concern, they did not believe that the City Council possessed the evidence necessary to substantiate their decision. They initiated a proceeding challenging that. They had no agreement at the present time as to what impact approval or rejection of this plan would have. It became more and more complex.

President Martin noted that it was the “old” City Council that decided that.

Mr. Wood replied that was correct, but unfortunately the law didn’t differentiate, the suit is against the City. That was the decision that the City made. If in fact they were allowed to proceed, that litigation may go away. They believed that the issue was one which was critical. How does an applicant come before the Board or the Council and know what is meant by what he would suggest were rather vague terms of intensity. Clearly, one can see the difference between high intensity, maybe the State Capital grounds during the Taste of Minnesota, versus the State Capital grounds normally. This was not a destination use, it was not an event use, it intended to tap into the flow of traffic there. He too was concerned about the issue of contact with the neighborhood on this matter, unfortunately it became very contentious in the last proceeding and they believed that the appropriate way to address that was to go to the Council Member and ask him to present his plan.

President Martin indicated that the Council Member was in attendance and they would ask him about that.

Commissioner Bradley asked if the legal action prevailed and it over-turned the City Councils action, would the Planning Commission then have two site plans before it?

Mr. Wood replied that he hadn’t gone that far ahead to know for certain. It would if the Commission approved this site plan, which they were asking them to do. Their position was that this plan, they believed by its design, addressed the concerns that the City Council raised in perhaps a better way than the original plan did. If the Commission rejected this plan and then they got the other plan approved, then they would expect to proceed with the old plan. If both plans were approved, he believed their intention was to proceed with this plan because they believed that it more nearly satisfied the complaints that they heard previously.

President Martin asked if the “old” plan was off the table for all intensive purposes?

Mr. Wood responded yes. The Commission approved it, but the City Council did not. Only if the Federal Court intervened, would that plan come back.

Commissioner Krause asked if there was a deadline for discovery in the case, was there mandatory mediation required and was a trial date set?

Mr. Wood replied that he believed they intended to have discovery be completed by October 1<sup>st</sup>. It was set for trial in either the November or December trial calendar.

Commissioner Krause asked if there was a required mediation?

Mr. Wood replied in Federal Court there was not, although typically the matter was referred to a Magistrate Judge for mediation. It was a very difficult issue to mediate. It required what he believed was going on at the time, exercise of a political will, rather than necessarily the kind of governmental function that the Planning Commission performs. It was decided by elected officials on the basis of many factors which may not have been related solely to this plan. He was asking the Commission to set aside those extraneous

concerns and decide on the basis of which this Planning Commission normally makes its decisions, look at this plan under these circumstances, does it meet the code and should it be approved. They asked that both the conditional use permits and the site plan that had been offered with the amendments that had been suggested be approved.

Commissioner Nestingen asked for clarification if they believed that the new plan alleviated the problem of intensity because it was less square footage?

Mr. Wood replied no, he didn't think the square footage would reduce the number of people who went to the convenience store.

Commissioner Nestingen stated that they would still be drawing on that same 15,000 cars and 2%.

Mr. Wood replied correct. From the original plan, he believed there were more pumps. They submitted an interim plan that never came before the Commission which reduced the number of pumps. They had reduced the number of service bays from eight to seven. The overall impact on the public was pretty much inconsequential, but he believed those steps were taken to convey to the Council and to the Commission that Bobby & Steve's wanted to cooperate and compromise with the neighborhood so that they could operate a successful business in this location, improve its appearance substantially and utilize a huge area of space that was presently completely unusable.

Commissioner Nestingen asked if their supposition was that the business was there, the 15,000 cars were already going by that intersection and they were simply going to capture them by this?

Mr. Wood replied correct, hopefully if in fact more vehicles go there, they wouldn't be pulling into other stations along the street. He didn't know the area they wanted to measure. There was nothing about this development that would increase the traffic on Nicollet Avenue.

President Martin stated for the general information of the new Commissioners, it would be fair to say that when this went through the Commission a year ago, what the Commission saw was something that met all of the requirements of the Zoning Code and the Commission approved it. When it got to the City Council, her interpretation was that it was treated as a rezoning and judged along those conditions, rather than what it actually was, a conditional use permit and a site plan. The issue of intensity was not something that came up in these kinds of applications. Her sense was that for whatever reason, the appeal was heard in a very different vein than what the Commission approved. She could be "off-base" about that, but that was what she thought happened.

Commissioner Nestingen added that the plan that the Commission approved last year was thought of as a proto-type and a good example of urban planning.

President Martin added from a planning perspective what they would be looking for.

Commissioner LaShomb stated when they came to Commission discussion, he asked for an explanation of whether they ought to be using a standard used by the Planning Commission a year ago or whether they ought to be using the standard used by the City Council who President Martin believed treated it as a rezoning.

President Martin replied that the Commission should use their normal standards.

Tim Helmen, 5748 1<sup>st</sup> Av. S, stated that he was at the meeting last year when this was first presented to the Commission and he thought the design then and the design now, maybe the last one even more so in terms of aesthetics was a model design in terms of this sort of development. It was a nice looking development, but the issue was whether that development belonged at this location, regardless of how it looked. In speaking of the location, it was interesting that they talked about just the Nicollet Avenue traffic. If you look on their web-site, [www.bobbyandstevesutoworld.com](http://www.bobbyandstevesutoworld.com), it promotes their easy access to interstates at all of their locations, including this one. They are definitely in their own promotional materials on their web-site, promoting the access to the interstate as a big plus. Now they are saying that they don't do that, one of those must be incorrect. As far as the Comp Plan not being brought up before, he remembered when Jim Voll made his initial presentation last year, he included in that, and it struck him as fairly tepid approval, because he did mention that there were conflicts between the site plan and the Minneapolis Comprehensive Plan. The Commission chose not to pursue that line of thought, he did put it on the table. That was the basis that they made the appeal on and that was the basis that the Council looked at. According to the City Charter, Compliance with the Minneapolis Plan is part of what the Commission is to look at in approving these. He thought the Comp Plan did come into play here and now. As far as traffic, they talk a lot about Nicollet, but they weren't talking at all about 58<sup>th</sup> which was not a main thoroughfare, it was not a standard residential street, but it was not a high intensity thoroughfare. That would bring a lot of traffic down Stevens, down 1<sup>st</sup> Avenue from the freeway through their neighborhood and it would be a destination site because people would want to try to avoid Nicollet and Diamond Lake Road which is a congested, difficult intersection with a bad angle. Traffic from the freeway would come through their residential streets to get to this site because that would be the easiest way and it would also increase traffic down 58<sup>th</sup>. It was interesting that they were appealing to the Commission to make this decision on the basis of respect for the law. They have been out of compliance on so many things in the current site. There was a misdemeanor case pending against them currently for their parking violations. This last spring they were piling their snow directly on the corner of the intersection of 58<sup>th</sup> and Nicollet covering the bus stop and you couldn't get off the bus and had to walk in the street. That was the kind of respect that they had for the law and it was ironic that they were talking about that was what the Commission should do. They say it would be better than what is there now. Yes, in an aesthetic sense, but they have always come back that it was what they wanted or nothing and there was no other alternative uses for that site, so they continue to let their property, including the housing that they own run down so that it becomes more of an issue where they can say it would be such a great improvement. Anything would be better than this, to try to "box" the neighbors into a corner. What it came down to was the issue of intensity. It was interesting that their lawyer had on one hand admitted that the impact of intensity of the redesign was inconsequential, but he said they were doing it to try to make a good show. They were trying to say that they had changed something, but they were admitting that it didn't really change anything, so they were putting some window dressing on this and trying to pretend that it addressed the issues. What it came down to was the intensity of use that the Comp Plan talks about. That is part of what the City Charter give the Commission as a responsibility to consider and the question it came down to was if that area of Minneapolis law is vague and if it needs some further definition, is it the role of this

Commission to make that sort of legislative or legal determination, or is it more appropriately left to the City Council if they felt that they wanted to make further clarification of the standards for intensity or if the legal system as there is a court system, if they require that, it seems that was the forum where those sorts of issues of law should be addressed rather than at the Commission. They were not an elected body, they were to interpret the law as it was laid out. There was obviously a difference of perspective on what the interpretation was and he thought that clarification needed to come from somewhere else other than this. He recommended that the Commission deny the conditional use permit because, as they had admitted, nothing had changed in terms of the intensity of use and they should let other processes make that legal clarification.

President Martin noted to Mr. Helman that the Comprehensive Plan was one of the things that the Commission dealt with and the Zoning Code was the other, and this parcel was appropriately zoned.

Mr. Helman stated when Jim Voll in his comments last time he brought up that there was the conflict and he understood that the zoning said one thing and the Comp Plan was the other. The Charter says that the Commission needed to address all of those. He understood that it was the zoning also.

Council Member Benson, 11<sup>th</sup> Ward, indicated that he wanted to clarify the issue about getting neighborhood approval for this project. He spoke with the applicant and indicated that he would speak with the neighbors who were immediately affected by the project, but he didn't believe he ever indicated that he would go to the neighborhood association and seek approval of this project from the neighborhood association. Perhaps there was a misunderstanding on that point by the applicant. He did bring the plan to the neighbors who immediately reside around where Bobby and Steve's is currently located and the proposed area, many of whom were at the meeting and they discussed the plan. He thought the major issue was that this plan, and the applicants counsel was very frank on this point, this plan did not differ in intensity from the prior plan which the Council did not approve. That issue was now in litigation. It seemed that there was no reason to proceed to approve a plan that varied not one wit in intensity and which was the reason that the City Council didn't approve it last time, based on the Comprehensive Plan when the matter was in the courts to be decided at this point. From his perspective, and the President raised the point of whether it was he or his predecessor, it was his predecessor and the entire Council acting, not just Council Member Mead at that point. From that perspective he saw no reason to make a decision at this point that would vary from what the Council had already decided and which was being litigated at this point in time.

President Martin asked if he was requesting that this be postponed until after the court case was settled?

Council Member Benson replied that he would suggest the Commission either do that or at least postpone it until they knew what the neighborhood felt on it. He was not certain how the neighborhood would rule, he didn't recall how they ruled the last time. At least they should hear from the neighborhood. He would say that it should be postponed until after the litigation was resolved because the issue of intensity was the sole, or one of the very fundamental reasons that this was overturned by the Council and he didn't see the purpose of moving ahead while the litigation was pending.



President Martin asked how Council Member Benson felt about them applying for a use that was legal under the Zoning Code?

Council Member Benson replied that it was his understanding that the Comprehensive Plan would not call for that type of intensity. They were basically going from a repair shop to a convenience store, repair shop and a car wash. They had done nothing to decrease the amount of intensity that was rejected by the Council. He would leave it for the Commission to determine if the Zoning Code allowed it.

Commissioner Krause asked if the Commission left it as it stood and did not prevail in the legal action, as he understood, they may find themselves with the previous site plan and if in fact this site was preferable, shouldn't the Commission approve the site plan and perhaps take other action on the conditional uses so that if they did not prevail, they at least had the somewhat better site plan before them?

Council Member Benson replied that they might want the Attorney to answer that. His only concern would be that he wouldn't want the Commission to prejudice the City's rights in the law suit by approving yet another plan that could be used as evidence against the City as it was proceeding in its legal action after being sued by the applicant.

Commissioner Krause stated that perhaps the Commission could ask staff to get that legal advice to the Commission in the interim.

President Martin indicated that Mr. Anderson had spoken to the City Attorney and could respond to that.

Anderson, staff, replied that he spoke with the City Attorney and asked if the Commission shouldn't go forward until the litigation was completed because he didn't want to try to compromise any litigation that the City was going through. The response he got from the City Attorney was that they should proceed with this and the Planning Commission should do what they do and not consider the fact that they were in litigation and he would deal with it as it came down the line. That was why staff proceeded at this point rather than saying that it was incomplete because it was in litigation.

Council Member Benson stated as he understood, the Commission needed to proceed and have a hearing because of the 60-day rule. If the Commission wouldn't have done that, they could have gone ahead and done the project. It was proper that the Commission was proceeding and acting upon this today, but he didn't think the Commission ought to approve the plan at this point.

Commissioner LaShomb stated that the Commission could wait and wait and hope that the court would make decisions for the City of Minneapolis, but he asked Council Member Benson what his standard was for intensity? What did they have to do to get to the point where intensity was not an issue? Apparently, the City Council didn't have an understanding of what intensity was, they just made a decision that it was too intense. The Planning Commission apparently didn't have one. He wasn't on the Commission. What was the standard that they were supposed to use?

Council Member Benson responded that was a good question, however he didn't make that determination, the prior Council had already done that. They made a determination that this was too intense, thus he thought for all intensive purposes, they had made that decision and as the counsel for the applicant pointed out, this did not vary at all in intensity. He thought they could at least say that the Council made a determination that this was too intense and that this new plan didn't vary from that. He could sympathize that it was difficult not to make a decision, but essentially the City Council had made their decision on this.

Commissioner LaShomb indicated several times since he had become a Commissioner in February he had argued that they shouldn't overturn decisions by previous City Council's, so maybe they shouldn't do that on this one either. But on the other hand maybe one of the ways to get some of the new City Council Members engaged in this issue of what was intensity is, would be to send this back up and look at it a second time and maybe since many new Council Members ran on the platform of making big changes in the City for the better, this would be an opportunity to accomplish that.

Jeff Brand, 5756 1<sup>st</sup> Av. S, stated that he wanted the Commission to know how many people were at the meeting from Windom Neighborhood and asked them to raise their hands, they had a pretty good representation. They had never really been against them being there, they had always been for them fixing up what they had and showing that they could be good neighbors with what they had. They hadn't done that. There had been a series of bad decisions on their part that he would hope would play into the issue of approving the conditional use permits. He was confused because a couple of terms had been thrown out and he requested clarification on community corridor, which this was said to be versus a commercial corridor and how this large development would fit into a community corridor?

Voll, staff, replied what was written in the staff report about community corridors was from the Comp Plan, "Community Corridors are locations that support new residential development at medium density and increase housing diversity in our neighborhoods. They support limited commercial uses which are measured against their impacts on residential character, such as the production of fumes or noise or negative aesthetics. Design and development along these streets is oriented toward the pedestrian experience. These streets, which form the spine of community corridors, carry a fairly high volume of traffic, but must balance vehicular traffic against residential qualities of life. These streets are also important identifiers and travel routes for neighborhood residents and pass-through traffic." Commercial corridors are the most intense corridor with commercial zoning on it such as Lake Street, Broadway, Hennepin or Central Avenue. How this fits in with it, he thought he had laid it out and that there was an element of subjectivity to it.

President Martin asked what was allowed in a C2 zone?

Voll, staff, replied that this use is allowed in a C2 district with a conditional use permit. With a conditional use permit, the Commission needed to make the findings that were listed in the report. It wasn't totally permitted, they did need to make findings.

Terri Cole, 5660 1<sup>st</sup> Av. S, indicated that there were a number of people that would go down there and help them fix up their property, that had never been an issue. But in 1995 that facility was given a letter from the City asking them to fix up their properties. The two buildings across the street on either corner got the same letter at the same time and both of them look fantastic. They had been willing to work with the neighborhood. He was on the Windom Community Council and they just approved fixing up the car wash one block away from where this site is proposed. They were very interested in getting their neighborhood looking good, but adding these items was too much for the number of houses around it. When you talk about the site being zoned C2, wasn't that part of an automatic zoning change that happened about five years ago?

Voll, staff, replied in 1999 the new Zoning Code was adopted and they rezoned commercial and industrial property. Residential property wasn't changed. They rezoned commercial and industrial property trying to chose the zoning that matched the previous zoning as much as possible and tried not to create non conforming uses which are uses that wouldn't be allowed under the new zoning because if the building were to burn down or something were to happen to it, it couldn't be rebuilt.

Mr. Cole stated that it was a gray area. At the last City Council meeting where they discussed this project, there was gray area that a number of Council Members were concerned about and why it was changed to a C2 district and not a C1 district.

Allison Little, 5752 1<sup>st</sup> Av. S, indicated in the findings of fact it didn't mention community corridors and it says, "Commercial services do not overwhelm the character of these streets, but are normally clustered store fronts or services found along their lengths. Commercial uses, whether retail or services, are low intensity in these areas. They do not create noise, significant traffic or disruption to the neighbors by being open for long, extended hours. These streets are a source of pride and identity for neighborhoods and they connect people and act as a definitive boundary for residents and workers." She thought if you look at their other sites, they are all at huge intersections, Washington and 35W, that is the kind of site they are looking at. 494 and France Avenue is another huge location, even Central Avenue is a four lane commercial corridor. This site is not. That is the big issue. They see the monstrosities with all of the lights and the traffic and they want to put that in this area. Nicollet Avenue is busy, but then there is a cross-street that only goes two blocks and ends at the freeway. They want to put something in that is comparable to what they have at their other sites and it was not a fit. That was what the neighbors were upset about.

Dean Beyser, 5748 Pleasant Av., indicated that they were good neighbors, but they were bad neighbors because they towed cars there and block the streets which always happened during rush hour. There was mass confusion. They push snow where they wanted to instead of where they should be putting it. It was things like that that get the neighbors upset.

Merrick Bombach, 5734 Nicollet Av. S, stated that his issue was with the intensity. He asked the Commission to look at it in the context to the rest of the corners on that intersection and the size of the businesses already there, the variety of the businesses already there would be repeated with the new site plan. Look in context with the intensity as concerned with all of the other businesses.

Mr. Thompson indicated that part of the problem was that everyone was looking at 58<sup>th</sup> and Nicollet as being a clone of the other Bobby and Steve's locations and it couldn't be further from the truth. They had four dispensers on this location. The 35W and Washington location had ten to twelve dispensers. The cost and size of that facility would be at least 2 - 2 ½ times as large as this facility would be. Columbia Heights was substantially larger, at least double. In terms of dollars, it was probably three times larger. This was not a proto-type Bobby and Steve's that had been noticed by the rest of the communities. This is a much smaller one that had been decreased in its magnitude. He also wanted to clarify the intensity issue. They were not trying to imply that this new plan was a decrease in intensity. The other plan that the Commission approved earlier and this plan would draw probably the same amount of traffic. They felt what they had done with this plan was to organize it on the lot so that they didn't have as much pedestrian traffic going between the convenience store, the service center and people parking at the convenience store and then going in to check out the service date for their car or vice versa. They also wanted to get the screening of the building and the car wash so that it hid some of activity on-site away from the neighborhood. They would prefer to go with the second plan. It would be a lower cost plan and they thought it was a compromise. Where they disagreed with the City Council was in the definition of intensity. They didn't believe this was a high intensity site. Southdale shopping center and the Mall of America were high intensity. A doctors office or small clinic was low intensity. In between that was a medium intensity and they felt that they clearly were a medium intensity to low intensity business, not high. They were talking 2% of the traffic. 2% was a low number. If they were saying 55%, then they were starting to climb toward high intensity. Being that there was no definition, he thought it was common sense that 2% of the existing traffic would be considered low.

Mr. Wood indicated in response to Council Member Benson, if there was confusion as to what his intentions were in respect to the plan, he apologized. There was no reluctance to present this to the Windom Community. It was simply that the responses that they had gotten were exactly what the Commission had heard. When you are dealing with words like intensity when there are no definitions or evidence presented as to what statistically that means or how you quantitatively verify that, it was virtually impossible to make decisions. They become political. He appreciated the comment Commissioner LaShomb made and the individuals who rejected the plan previously were the Committee Chair Lisa McDonald who wasn't on the Council anymore. Joan Campbell who was not on the Council anymore. Jim Niland who was not there and Dore Mead who was not there. Council Member Goodman and Ostrow are there and they had worked at some difficulty with Council Member Goodman with respect to a very similar operation on Cedar Lake Road that is also a Bobby and Steve's Autoworld. The use to which the property was put was commensurate with the size of the property and the surrounding use. Washington and 35W is a hugely intense intersection and therefore that business is. 494 and France Avenue is hugely intense. This is not at an interchange, it was not even on the main East/West roads, it would not draw traffic except from Nicollet. Until the Commission or the Council adopted a more quantitative evaluation for what constituted intensity, this plan could only be approved on the standards that the Commission generally applied to the approval of plans and that was what they were asking them to do.

Commissioner Olson stated that he thought the first plan was much more attractive than the second plan. He thought it would have been a wise decision to take that. The property is zoned for this use with a conditional use permit and they did own the property. They were talking about a substantial investment and currently they get about 50 cars a day at the facility and they hoped to get 300 which was not a huge number for this type of operation. He thought it was a low number and hoped that they would get more than that. He didn't think by the facility going in and the improvement that they were talking about, they would take the traffic count on Nicollet Avenue from 15,000 to 20,000 because he didn't think that they would get 5,000 cars that would come just specifically to go to this facility. He thought what the applicant was trying to do was increase the market share that was already going down Nicollet Avenue, was that correct?

Mr. Warnert replied yes.

Commissioner Olson didn't see a problem with that. They were willing to make an investment into the community to try to obtain some more market share of what was already there and not increasing the volume that was already going down Nicollet Avenue. He didn't see a problem with that at all and thought it was great.

Mr. Beyser stated that the City Council and the applicants just didn't get that the neighborhood didn't want them. They didn't want that big of a facility there, there was just too much traffic now and they couldn't cope with the traffic that they already had. This would bind things up more. They were fighting their tow trucks and the cars in the street all the time now. It would get worse.

The public hearing was closed.

Commissioner Bradley stated that this had a lot of complexity. One was the fact that it was in litigation over an issue that was vague, the definition of intensity. They were being asked to choose in some respects between the Comp Plan and the Zoning Code and he didn't know if they had ever done that and wasn't prepared to start. He asked for clarity if the convenience store was zoned for this site? Is a C2 zoning use?

Anderson, staff, replied that all of the uses that want to go in there were zoned correctly with a C2 zoning. They needed conditional use permits but they were allowed. Commissioner Bradley asked if this were a variety of separate owners, one person could have a car repair, one person could have a gas station and one person could have a convenience store and they would still be on this site, was that correct?

Anderson, staff, replied all of those uses were allowed in the C2 district.

Commissioner Bradley indicated that Mr. Beyers comments were probably the most accurate tonight that they did not want the development. The problem was that it was legally zoned for this development. He had heard comments that it was too intense and that they were bad neighbors. Maybe the solution to them being bad neighbors was to build a new facility so they could get the tow trucks off of the street and put the snow inside of their lot where it couldn't be seen. He didn't know, maybe it would work better. Maybe they thought that rather than fix it up, maybe they should build it new, that was a solution. It didn't seem an unreasonable thing to do. They were adding a gas station and they already had a repair facility and a convenience store. He too thought that the

original plan functioned better from an urban design standpoint. Whether or not they could take the original design and add the car repair to it, configured so the car repair could be added to the angular area which would stop some cross pedestrian or customer traffic could be looked at. He was unsure how to proceed given if they prevailed in court, they would end up with two site plans. Which one would they build?

President Martin noted that the applicant said that this was their preferred site plan.

Commissioner Bradley felt they should make a decision as they normally would separate from the action that the previous Council took. He couldn't see much in their action that they based their decision on the Zoning Code. They referred to it in one sentence and they also added to his confusion. On page six of the appeal by the Z&P Committee, paragraph one, stated the proposal does not comply with criteria of Section 525.349 (1), (2) or (5) of the Zoning Code, he asked Mr. Anderson to comment in terms of the language in the Zoning Code as to the recommendations from the City Council?

Anderson, staff, replied that it was referring to the required findings for conditional use permits found in Section 525.340 of the Zoning Code and the number citations, which were (1), (2) and (5) deal with, "the establishment, maintenance or operation of the conditional use would not be detrimental to or endanger the public health, safety, comfort or general welfare" was number one. Number two was, "that the conditional use would not be injurious to the use and enjoyment of other property in the vicinity and would not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district." Number five was, "that the conditional use is consistent with the applicable policies of the Comprehensive Plan."

Commissioner Krause thought to a certain extent that there wouldn't be absolute standards that could be applied to everything. That was why they were as a body given certain discretion to make those decisions. Perhaps in the change in the Zoning Code in 1999, some things were done improperly and the community corridor wasn't totally reflected in the C2 zoning that was applied in this area. He was inclined to follow staff's recommendations. Commissioner Krause motioned to deny the conditional use permit application for an automobile convenience facility with gas pumps. There being no second, the motion failed.

Commissioner Nestingen stated that he concurred with Commissioner Bradley's concerns and thoughts for the most part. He did business at this corner once and thought how awkward their current facility was. A new facility with all of the new space could be the answer to the neighborhood problem. They couldn't go back to the first plan because there were inconsistencies with a few of the decisions. The new plan was 15% less in the footprint. He would move to accept this plan to move forward and go against the staff recommendation on the others.

Commissioner Nestingen motioned, LaShomb seconded to adopt the findings prepared by staff and **approve** the site plan review application (Item #32) for an automobile convenience facility, minor automobile repair, and car wash for property located at 5801 Nicollet Avenue South subject to the following conditions: 1) Approval of the conditional use permits; 2) Staff review and approval of the final site, landscaping, and snow storage and removal plans. All site improvements shall be completed by October 30, 2003 (unless extended by the Zoning Administrator) or permits may be revoked for noncompliance; 3) If estimated site improvement costs exceed \$2,000, the applicant shall submit a performance bond in the amount of 125% of the estimated site improvement costs before building permits may be issued; 4) The use is subject to the specific development standards for automobile convenience facilities, automobile repair (minor), and car washes found in Section 536 of the Zoning Ordinance; 5) A Stage I vapory recovery system is required; 6) Music or speakers at the pumps shall not be audible beyond the property line of the site; 7) The doors to the car wash shall be closed at all times except to allow vehicles to enter and exit the buildings; 8) The car wash hours shall be limited from 7:00 a.m. to 9:00 p.m. daily; 9) Lighting is subject to Section 535.590. A lighting diagram is required as a part of the final site plan; 10) The final landscaping plan will include landscaping along the north and west sides of the convenience store and service center, a buffer of evergreen trees at the northeast corner for the residences to the east, provision of four trees on the 58<sup>th</sup> Street frontage and three trees on the Nicollet Avenue frontage, and provisions to protect trees on adjacent property from damage during site construction; 11) Provision of a three to four foot high decorative black steel fence along the 58<sup>th</sup> and Nicollet Avenue frontages along the sidewalk to control access to the site and to protect the landscaping; 12) If bicycle parking is provided it shall be located closer to the front entrance of convenience store; and, 13) All fuel and other deliveries shall be restricted to business hours.

President Martin stated that the motion on the floor was to approve item #32 recognizing that the first condition of approval was the approval of the conditional use permits, so they would need to deal with those.

Commissioner Schiff indicated on item #32 the applicant stated repeatedly that they thought this was consistent with the neighborhood use because it would tap into the flow of traffic that was already there and that they wouldn't be seeking use from people from further away, so he didn't see the need for the pylon sign on the corner which would seem to be its intention, something bright, big and up in the air to attract people. He would propose that they eliminate the pylon sign and require signage on the building itself that would be more consistent with a pedestrian feel in a commercial corridor. It would be a new condition #14.

Voll, staff, asked for clarification if Commissioner Schiff would accept a monument sign, or definitely want it on the building?

Commissioner Schiff replied on the building. He would make condition #14 a friendly amendment, elimination of the pylon sign and suggested a new condition #15 regarding windows. They first proposed a one-story building, then they proposed a two story building. All of the windows were on the second story of the two-story building. The purpose was to create a glow around the building so neighbors from blocks away could see this glow on the corner and draw more attention to the building. He suggested that they move the windows down to the first story to enhance the pedestrian environment which was more consistent with a neighborhood corridor and reduce the heavy use and the impact lighting would have on the residential uses nearby.

President Martin asked if that was considered a friendly amendment?

Commissioner Nestingen asked if they were eliminating windows on the second floor and moving them to the first?

Commissioner Schiff replied yes, on the North facing 58<sup>th</sup>.

Commissioner Bradley indicated that a freezer was on the wall there.

Commissioner Nestingen stated that the spirit of the suggestion was good, but the reality... he agreed that the North elevation could use some work and some definition.

Commissioner Bradley indicated that there was a cooler located in the North elevation.

Commissioner Schiff replied that coolers could be moved.

Commissioner Bradley didn't disagree, he was just noting that point.

Commissioner Nestingen indicated they could include the impression of fenestration.

President Martin stated that they could have "mock" windows that they had made other people do that weren't actually windows.

Commissioner Schiff stated that he would just move the windows down from the second story to the first story and the same on the West elevation. There were windows on the second story with a big blank wall.

Commissioner Bradley indicated that was the location of the restrooms.

Commissioner Schiff indicated internal reconfiguration would probably be necessary. He thought moving the windows would make it more consistent with the neighborhood corridor and detract from the impact on the neighborhood. He believed the intention of the windows now was to create a glow around the building as an advertisement.

Commissioner Bradley stated this got back to the fact that the previous design was all one story, which the Commission thought was better because it addressed some of what was being brought up. This looked bigger to him and looked more intense.

Commissioner Schiff added as condition #15 moving the windows.....

Commissioner Schiff indicated that they would be demolishing two single family homes and wondered if the applicant would be willing to contract with the deconstruction company before demolishing them to make sure that any of the residential features could be re-used. The applicants agreed, so he suggested that be added as condition #16.



President Martin asked if Commissioner Nestingen accepted the amendment?

Commissioner Nestingen replied he did not have a problem with #14 or #16, but the window issue should possibly be deferred to staff for a more aesthetic review rather than the Commission trying to redesign it at the meeting. That there possibly be some rework of the windows.

President Martin stated a clear understanding that the Commission would expect that there be windows or increased brick detailing.

Commissioner Schiff indicated that the point was also to remove the windows from the second floor that were only there to create the glow at night. There was no second story to the building.

Commissioner Bradley replied that there was a second story.

Commissioner Nestingen noted that it was employee lounge.

Commissioner Bradley clarified that there was a second floor and showed the elevations to Commissioner Schiff. They had windows for the break room and storage area.

Commissioner Schiff indicated that there should be some working with staff to increase the pedestrian level appeal and to decrease some of the fenestration on the second story which would help the impact on the neighborhood.

Commissioner Nestingen accepted that as a friendly amendment.

The motion to approve the site plan with the additional conditions, **carried**. (See full text on page 26)

Commissioner Schiff stated that he would be voting to deny the application for the car wash. His reason being that the Commission didn't like to chose between the Zoning Code and the Comprehensive Plan, he didn't think they needed to. This begged the question is a C2 a C2 a C2 in all locations? He suggested that C2 was not the same on a commercial corridor as it was on a neighborhood corridor. This was a dramatic increase in the intensity of uses and although the previous Council didn't define that intensity, he would say going from one to four (uses), was too intense, so by limiting them from only one to three (uses), they would still allow them to engage in their property rights as property owners of C2 property and the impacts of the waiting area for the car wash would be eliminated, also the fumes. The Council cited all of those in their previous action and he thought they would still be left with a reasonable use of a C2 property when they eliminated the car wash.

President Martin asked if Commissioner Schiff was asking if they should vote separately on all conditional use permit applications?

Commissioner Schiff replied yes, he would vote no on the car wash.

Commissioner LaShomb motioned, Nestingen seconded notwithstanding staff's recommendation to **approve** the conditional use permit application for an automobile convenience facility with gas pumps for property located at 5801 Nicollet Avenue South.

Commissioner LaShomb indicated that a finding could be that it was consistent with the zoning.

President Martin stated that Mr. Anderson read what was cited in the City Council's Z&P overturn of the earlier decision. One of the questions was if the convenience store was injurious to the neighborhood? Did it have detrimental effects? The standard.

Commissioner Nestingen indicated that the use, the store and pumps were not - inaudible.

Commissioner Bradley stated when the Commission approved this before, they stated that it was consistent with the Comprehensive Plan, the City Council said it wasn't. Is that a difference in one bodies point of view on a subjective issue versus another bodies point of view?

President Martin replied clearly.

Commissioner Bradley stated that he thought it was still consistent with the policies of the Comprehensive Plan.

Anderson, staff, stated one of the ways that the Commission could look at it was that the former Council indicated that it was not consistent because of the intensity. With this plan, the applicant had indicated that the square footage of the convenience store had decreased by 1,500 square feet. He thought they had also decreased the bay areas from 8 to 7. The Commission could indicate that if they wanted to find consistency with the City's Comprehensive Plan, that this particular plan was consistent because of the decrease in intensity from the original plan, so it began to address what the City Council was trying to get at.

The motion to approve the conditional use permit application for an automobile convenience facility with gas pumps for property located at 5801 Nicollet Avenue South notwithstanding staff's recommendation **carried** based on the following findings of fact:

- 1) The proposed development is adjacent to residential uses to the East and to two residential properties to the South. Across the street to the West are commercial and residential uses and further South on the block is C2 commercial uses. In addition, all four corners of the intersection at 58<sup>th</sup> Street and Nicollet Avenue are zoned commercial, three of the four corners currently contain auto related uses.

There are zoning code requirements, specific development standards and conditions of approval that should address any negative impacts of the site such as litter, lighting, noise, site design and landscaping.

- 2) All five parcels proposed for the redevelopment are zoned C2. The proposed uses are permitted as conditional uses in the C2 zoning district. This use is less intense than the previous submitted plan of July 23, 2001. The three buildings proposed for development would cover approximately 9,896 square feet compared to 11,449 square feet of the previous plan. This plan has a smaller convenience store and a reduction in service bays from eight to seven. This results in a 15% reduction in the square footage of the development.

Information presented at the public hearing by the applicant, namely that market studies indicate that traffic for the use would draw from Nicollet Avenue exclusively and that it is anticipated that approximately one car every five minutes would access the site, the uses are considered more medium intensity uses rather than high intensity uses. Therefore, with the changes to the site plan, the required conditions of approval, and the information presented by the applicant, the site should not be injurious to the use and enjoyment of the surrounding area.

- 3) Same as staff report
- 4) Public Works has reviewed the site for vehicular access, curb cut locations and widths, and finds the site plan acceptable regarding these items. The site does not meet the code requirement of 100,000 square feet of new or additional gross floor area for requiring a Travel Demand Management Plan. Public Works staff reviewed the site plan and determined that the adjacent streets and intersection will provide an adequate level of service for the site. The required parking, loading, and stacking spaces are provided.
- 5) The Comprehensive Plan does not propose specific development for this corner. The plan designates this part of Nicollet as a community corridor (page 1.4.30). The Minneapolis Plan states the following about community corridors:

“The streets have become physical and cultural pathways that link people to each other, to local institutions and to daily destinations such as work, shopping, school or home. Today, these important streets that run through the city’s many communities connect neighborhoods, serve as a principal travel route for many residents and visitors, and are almost always characterized by their limited mixed use. These streets serve as community corridors. Commercial services do not overwhelm the character of these streets, but there are normally clustered storefronts or services found along their lengths. Commercial uses, whether retail or services, are low intensity in these areas. They do not create noise, significant traffic or disruption to neighbors by being open to the public for extended hours. These streets are also a source of pride and identity for neighbors: they both connect people and act as a definitive boundary for residents, workers and investors.

Community Corridors are locations that support new residential development at medium density and increased housing diversity in our neighborhoods. They support limited commercial uses, which are measured against their impacts on residential character, such as the production of fumes or noise or negative aesthetics. Design and development along these streets is oriented towards the pedestrian experience. The streets, which form the spine of the community corridors, carry fairly high volumes of traffic, but must balance vehicular travel against residential quality of life. These streets are also important identifiers and travel routes for neighborhood residents and pass-through traffic.”

In general community corridors support medium density residential and limited commercial use which is measured against its impacts on residential character. However, the site is zoned C2 which allows the uses as conditional uses and the automobile repair business exists on the site currently. There are several large-scale commercial uses to the south of the site and commercial uses on all four corners of the intersection. With proper conditions to address the negative impacts of the site the development will be in conformance with the comprehensive plan. Conditions of approval include: conformance with the required specific development standards for the individual uses, requirement of a Stage I vapor recovery system to control fumes, restrictions on sound levels from the speaker systems, limiting the car wash hours from 7:00 a.m. to 9:00 p.m., and hours for the other uses to 10 p.m. Sunday through Thursday and 11 p.m. Friday and Saturday, compliance with the lighting requirements of the zoning code, and provision of improved landscaping and fencing. In addition, the intensity of the development has been reduced from the previous plan denied by the City Council. There has been a reduction in the overall square footage of the buildings, the pylon sign has been eliminated, and the number of service bays has been reduced from eight to seven. The intensity of the development, with the required conditions of approval to mitigate negative impacts, is appropriate for a community corridor.

Commissioner Krause voted no.

30. **5801 Nicollet Avenue South (11<sup>th</sup> Ward - BZZ-636, CUP)**

Application by Paul Warnert d.b.a. Bobby & Steve's Autoworld for a conditional use permit to allow a convenience store with minor automobile repair. (Staff, Jim Voll)

The public hearing was opened.

See discussion in item # 30 above.

The public hearing was closed.

Commissioner LaShomb motioned, Bradley seconded not withstanding staff's recommendation to **approve** the conditional use permit application for a convenience store with minor automobile repair for property located at 5801 Nicollet Avenue South based on the following findings of fact:

- 1) The proposed development is adjacent to residential uses to the East and to two residential properties to the South. Across the street to the West are commercial and residential uses and further South on the block is C2 commercial uses. In addition, all four corners of the intersection at 58<sup>th</sup> Street and Nicollet Avenue are zoned commercial, three of the four corners currently contain auto related uses.

There are zoning code requirements, specific development standards and conditions of approval that should address any negative impacts of the site such as litter, lighting, noise, site design and landscaping.

- 2) All five parcels proposed for the redevelopment are zoned C2. The proposed uses are permitted as conditional uses in the C2 zoning district. This use is less intense than the previous submitted plan of July 23, 2001. The three buildings proposed for development would cover approximately 9,896 square feet compared to 11,449 square feet of the previous plan. This plan has a smaller convenience store and a reduction in service bays from eight to seven. This results in a 15% reduction in the square footage of the development.

Information presented at the public hearing by the applicant, namely that market studies indicate that traffic for the use would draw from Nicollet Avenue exclusively and that it is anticipated that approximately one car every five minutes would access the site, the uses are considered more medium intensity uses rather than high intensity uses. Therefore, with the changes to the site plan, the required conditions of approval, and the information presented by the applicant, the site should not be injurious to the use and enjoyment of the surrounding area.

- 3) Same as staff report
- 4) Public Works has reviewed the site for vehicular access, curb cut locations and widths, and finds the site plan acceptable regarding these items. The site does not meet the code requirement of 100,000 square feet of new or additional gross floor area for requiring a Travel Demand Management Plan. Public Works staff reviewed the site plan and determined that the adjacent streets and intersection will provide an adequate level of service for the site. The required parking, loading, and stacking spaces are provided.
- 5) The Comprehensive Plan does not propose specific development for this corner. The plan designates this part of Nicollet as a community corridor (page 1.4.30). The Minneapolis Plan states the following about community corridors:

“The streets have become physical and cultural pathways that link people to each other, to local institutions and to daily destinations such as work, shopping, school or home. Today, these important streets that run through the city’s many communities connect neighborhoods, serve as a principal travel route for many residents and visitors, and are almost always characterized by their limited mixed use. These streets serve as community corridors. Commercial services do not overwhelm the character of these streets, but there are normally clustered storefronts or services found along their lengths. Commercial uses, whether retail or services, are low intensity in these areas. They do not create noise, significant traffic or disruption to neighbors by being open to the public for extended hours. These streets are also a source of pride and identity for neighbors: they both connect people and act as a definitive boundary for residents, workers and investors.

Community Corridors are locations that support new residential development at medium density and increased housing diversity in our neighborhoods. They support limited commercial uses, which are measured against their impacts on residential character, such as the production of fumes or noise or negative aesthetics. Design and development along these streets is oriented towards the pedestrian experience. The streets, which form the spine of the community corridors, carry fairly high volumes of traffic, but must balance vehicular travel against residential quality of life. These streets are also important identifiers and travel routes for neighborhood residents and pass-through traffic.”

In general community corridors support medium density residential and limited commercial use which is measured against its impacts on residential character. However, the site is zoned C2 which allows the uses as conditional uses and the automobile repair business exists on the site currently. There are several large-scale commercial uses to the south of the site and commercial uses on all four corners of the intersection. With proper conditions to address the negative impacts of the site the development will be in conformance with the comprehensive plan. Conditions of approval include: conformance with the required specific development standards for the individual uses, requirement of a Stage I vapor recovery system to control fumes, restrictions on sound levels from the speaker systems, limiting the car wash hours from 7:00 a.m. to 9:00 p.m., and hours for the other uses to 10 p.m. Sunday through Thursday and 11 p.m. Friday and Saturday, compliance with the lighting requirements of the zoning code, and provision of improved landscaping and fencing. In addition, the intensity of the development has been reduced from the previous plan denied by the City Council. There has been a reduction in the overall square footage of the buildings, the pylon sign has been eliminated, and the number of service bays has been reduced from eight to seven. The intensity of the development, with the required conditions of approval to mitigate negative impacts, is appropriate for a community corridor.

**Carried**, Commission Krause voted no.

31. **5801 Nicollet Avenue South (11<sup>th</sup> Ward - BZZ-636, CUP)**

Application by Paul Warnert d.b.a. Bobby & Steve’s Autoworld for a conditional use permit to allow a convenience store with a car wash. (Staff, Jim Voll)

The public hearing was opened.

See discussion in item # 30 above.

The public hearing was closed.

Commissioner LaShomb motioned, Bradley seconded not withstanding staff’s recommendation to **approve** the conditional use permit application for an automobile convenience facility with a car wash for property located at 5801 Nicollet Avenue South.

Commissioner LaShomb stated that he didn't like car washes very much either and was glad that he didn't live close to one, but on the other hand he was worried about the economic impact of removing that piece of the business. That might be the "make or break" about whether or not this was financially a feasible re-use of the site. He didn't think the car wash was that much of a burden on this site, that was why he made the motion to approve it.

Commissioner Schiff stated that those concerns were completely inappropriate at the Planning Commission level. They were not to consider financial impact of peoples developments and saying that they were concerned about the bottom line was not in any way consistent with the types of decisions and approvals before the Commission. They were to look at the use and the way that it impacted people. Car washes with a staging area had an impact. The Commission was not to consider the bottom line.

President Martin indicated one of the ways to think about this was that, as Commissioner Schiff pointed out, if this was approved by this body it was giving the business the ability to move from one kind of use to ultimately four or three. Even if it were only three, it was still two more than were already there. They would clearly have to make the economic decision whether or not that was viable. Commissioner Schiff was right, that was not the Commissions purview to worry about that.

Commissioner LaShomb asked if the possibility that there might be pollution on the site as a result of the car wash was an issue that the Planning Commission could resolve?

President Martin replied yes.

Commissioner LaShomb indicated his argument would be that he didn't think the car wash was anymore polluting than the other service garage. He thought the car wash was an appropriate use for this site and was consistent with the Comp Plan and consistent with the zoning for the site.

Commissioner Nestingen stated that he would vote with Commissioner Schiff on denying this or upholding the staff recommendation bowing to the previous Council's thought about intensity. He noticed that the car wash was a separate structure. In the future, if this business owner wanted to apply to build a car wash on this site, would that be possible? Two years down the line if this was built and the neighbors were happy and there was no noise or traffic, and all of the fears weren't there and they applied, could they appear before the Commission and then build the car wash?

Anderson, staff, replied yes.

Commissioner Bradley stated from where he sat, there had been virtually no change since the 2001 plan that the Commission approved. The arguments were the same as they were a year ago. The Commission approved it a year ago, he was prepared to approve it again and let the judge fight it out. He thought it was a good planning decision a year ago and though it was a good planning decision now.

President Martin called the question.

Commissioner Krueger asked for clarification if the motion was to accept the staff recommendation to deny?

President Martin replied that the motion on the floor was to approve (the conditional use permit) for the same reasons that they approved the others.

The motion to **approve** the conditional use permit to allow a car wash **carried** based on the following findings of fact:

- 1) The proposed development is adjacent to residential uses to the East and to two residential properties to the South. Across the street to the West are commercial and residential uses and further South on the block is C2 commercial uses. In addition, all four corners of the intersection at 58<sup>th</sup> Street and Nicollet Avenue are zoned commercial, three of the four corners currently contain auto related uses.

There are zoning code requirements, specific development standards and conditions of approval that should address any negative impacts of the site such as litter, lighting, noise, site design and landscaping.

- 2) All five parcels proposed for the redevelopment are zoned C2. The proposed uses are permitted as conditional uses in the C2 zoning district. This use is less intense than the previous submitted plan of July 23, 2001. The three buildings proposed for development would cover approximately 9,896 square feet compared to 11,449 square feet of the previous plan. This plan has a smaller convenience store and a reduction in service bays from eight to seven. This results in a 15% reduction in the square footage of the development.

Information presented at the public hearing by the applicant, namely that market studies indicate that traffic for the use would draw from Nicollet Avenue exclusively and that it is anticipated that approximately one car every five minutes would access the site, the uses are considered more medium intensity uses rather than high intensity uses. Therefore, with the changes to the site plan, the required conditions of approval, and the information presented by the applicant, the site should not be injurious to the use and enjoyment of the surrounding area.

- 3) Same as staff report
- 4) Public Works has reviewed the site for vehicular access, curb cut locations and widths, and finds the site plan acceptable regarding these items. The site does not meet the code requirement of 100,000 square feet of new or additional gross floor area for requiring a Travel Demand Management Plan. Public Works staff reviewed the site plan and determined that the adjacent streets and intersection will provide an adequate level of service for the site. The required parking, loading, and stacking spaces are provided.
- 5) The Comprehensive Plan does not propose specific development for this corner. The plan designates this part of Nicollet as a community corridor (page 1.4.30). The Minneapolis Plan states the following about community corridors:



“The streets have become physical and cultural pathways that link people to each other, to local institutions and to daily destinations such as work, shopping, school or home. Today, these important streets that run through the city’s many communities connect neighborhoods, serve as a principal travel route for many residents and visitors, and are almost always characterized by their limited mixed use. These streets serve as community corridors. Commercial services do not overwhelm the character of these streets, but there are normally clustered storefronts or services found along their lengths. Commercial uses, whether retail or services, are low intensity in these areas. They do not create noise, significant traffic or disruption to neighbors by being open to the public for extended hours. These streets are also a source of pride and identity for neighbors: they both connect people and act as a definitive boundary for residents, workers and investors.

Community Corridors are locations that support new residential development at medium density and increased housing diversity in our neighborhoods. They support limited commercial uses, which are measured against their impacts on residential character, such as the production of fumes or noise or negative aesthetics. Design and development along these streets is oriented towards the pedestrian experience. The streets, which form the spine of the community corridors, carry fairly high volumes of traffic, but must balance vehicular travel against residential quality of life. These streets are also important identifiers and travel routes for neighborhood residents and pass-through traffic.”

In general community corridors support medium density residential and limited commercial use which is measured against its impacts on residential character. However, the site is zoned C2 which allows the uses as conditional uses and the automobile repair business exists on the site currently. There are several large-scale commercial uses to the south of the site and commercial uses on all four corners of the intersection. With proper conditions to address the negative impacts of the site the development will be in conformance with the comprehensive plan. Conditions of approval include: conformance with the required specific development standards for the individual uses, requirement of a Stage I vapor recovery system to control fumes, restrictions on sound levels from the speaker systems, limiting the car wash hours from 7:00 a.m. to 9:00 p.m., and hours for the other uses to 10 p.m. Sunday through Thursday and 11 p.m. Friday and Saturday, compliance with the lighting requirements of the zoning code, and provision of improved landscaping and fencing. In addition, the intensity of the development has been reduced from the previous plan denied by the City Council. There has been a reduction in the overall square footage of the buildings, the pylon sign has been eliminated, and the number of service bays has been reduced from eight to seven. The intensity of the development, with the required conditions of approval to mitigate negative impacts, is appropriate for a community corridor.

with the following vote:

Yea:	Bradley, Hohmann, LaShomb, Martin, Olson – 5
Nay:	Krause, Krueger, Nestingen and Schiff – 4.
Absent:	Johnson – 1.

President Martin stated that she voted in favor because she believed it was consistent with what the Commission had approved last time and if it was a reasonable decision last time, it still seemed like a reasonable decision.

32. **5801 Nicollet Avenue South (11<sup>th</sup> Ward - BZZ-636, Site Plan Review)**

Application by Paul Warnert d.b.a. Bobby & Steve's Autoworld for site plan review of a convenience store with gas pumps, minor automobile repair and a car wash. (Staff, Jim Voll)

The public hearing was opened.

See discussion in item # 30 above.

The public hearing was closed.

Commissioner Nestingen motioned, LaShomb seconded to adopt the findings prepared by staff and **approve** the site plan review application for an automobile convenience facility, minor automobile repair, and car wash for property located at 5801 Nicollet Avenue South subject to the following conditions: 1) Approval of the conditional use permits; 2) Staff review and approval of the final site, landscaping, and snow storage and removal plans. All site improvements shall be completed by October 30, 2003 (unless extended by the Zoning Administrator) or permits may be revoked for noncompliance; 3) If estimated site improvement costs exceed \$2,000, the applicant shall submit a performance bond in the amount of 125% of the estimated site improvement costs before building permits may be issued; 4) The use is subject to the specific development standards for automobile convenience facilities, automobile repair (minor), and car washes found in Section 536 of the Zoning Ordinance; 5) A Stage I vapory recovery system is required; 6) Music or speakers at the pumps shall not be audible beyond the property line of the site; 7) The doors to the car wash shall be closed at all times except to allow vehicles to enter and exit the buildings; 8) The car wash hours shall be limited from 7:00 a.m. to 9:00 p.m. daily; 9) Lighting is subject to Section 535.590. A lighting diagram is required as a part of the final site plan; 10) The final landscaping plan will include landscaping along the north and west sides of the convenience store and service center, a buffer of evergreen trees at the northeast corner for the residences to the east, provision of four trees on the 58<sup>th</sup> Street frontage and three trees on the Nicollet Avenue frontage, and provisions to protect trees on adjacent property from damage during site construction; 11) Provision of a three to four foot high decorative black steel fence along the 58<sup>th</sup> and Nicollet Avenue frontages along the sidewalk to control access to the site and to protect the landscaping; 12) If bicycle parking is provided it shall be located closer to the front entrance of convenience store; 13) All fuel and other deliveries shall be restricted to business hours; 14) The pylon sign shall be replaced with signage on the building; 15) More fenestration shall be provided on the first floor of the North and West elevations and lighting reduced on the second floor; and, 16) The applicant shall consider contracting with a deconstruction company before demolishing the home for re-use of the residential fixtures. **Carried.**